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DIVISION II

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STATE OF WASHINGTON

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NO. 46794-1-II

Court Of Appeals, Division II
Of The State Of Washington

In Re Marriage Of
Aeran H Mursch, Appellant
And
Richard L. Mursch, Respondent.

Brief of Appellant

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I. ASSIGNMENT OF ERRORS

- A. The court erred by finding that Richard's concealment of the finality of the case, through fraud, for a two year time period, resulting in Aeran's subsequent inability to seek a remedy under 60(b)1, did not constitute outstanding circumstances under CR 60(b)11 justifying the vacation of the default orders.
- B. The court erred by finding that no fraud was present under CR 60(b)4 when Richard forged Aeran's name on the child support order and bank document so that he could conceal from Aeran that the case had been concluded and that she had an existing enforceable right in a court order.
- C. The court erred by finding that Richard's concealment of the finality of the case and his continued control over child support, spousal maintenance, and family home for two years, was a plausible arrangement agreed to by the parties and did not constitute fraud under CR 60(b)4.
- D. The court erred when it found that child support and spousal maintenance paid to and accessible only to Richard, the obligor and non-custodial parent, satisfied the orders of the court.
- E. The court erred by finding that the division of the property and award of maintenance to Wife, was a just and equitable distribution division.
- F. The court erred when it found that the denial of the motion to vacate default orders did not violate Aeran's due process rights.
- G. The court erred when it denied Aeran attorney fees for Richard's intransigence and his ability to pay.

II. STATEMENT OF THE CASE

This case is about whether the trial court abused its discretion in refusing to grant Aeran's motion to vacate a Decree

of Legal Separation, where Richard procured a default order awarding him a disparate share of the marital assets by concealing the conclusion of the case.

Richard (1) entered a judgment 30 days after service of the petition, (2) concealed the existence of final orders from Aeran (3) forged Aeran's name on the child support order and a bank authorization form, so that he could maintain a "marriage status quo" and conceal the existence of final orders from Aeran.

In its totality, Richard manipulated his wife's cultural vulnerabilities and her co-dependency on him to prevent her from defending this action by continuing to follow this status quo for two years. As a result, Aeran was deprived of her due process rights to defend the action and the opportunity to vacate a default judgment timely under CR 60b(1). Aeran now seeks a remedy under CR 60(b)4 and CR 60 (b)11.

A. Marriage history

Aeran Mursch (hereafter "Aeran") and Richard Mursch (hereafter "Richard") married on October 22, 1992. (RP 19, CP 2) They had two daughters, M.M (15 years old) and K.M. (12 years old). (RP 21 CP 2,3) They are now 18 and 15 years old respectively. (CP 2,3)

Aeran is of Korean descent and works as a stay-at-home mother since the parties married 20 years ago. (RP 19, 21) She emigrated from Korea United at the age of 26. (RP 22) Aeran's primary role was to care for the children, maintain the household and care for Richard. (RP 21) Richard works as a manager for Boeing and was the breadwinner in the marriage and sole financial support for the family. (RP 79) Richard is a Korean adoptee and was raised by American parents. (CP 15) His father is Caucasian American, and his mother is Korean. (CP 15) His English is proficient. (RP 24) The parties spoke Korean in the household to each other to make it easier for Aeran. (RP 21) Aeran also spoke some English in the home to teach their two children both languages. (RP 21)

Aside from English classes taken in grammar school in Korea and two months of ESL (English as a Second Language), her English language skills were self-taught. (RP 22) Aeran can write in English and if she does not understand a concept she will consult a dictionary or her husband, Richard. (RP 24)

Richard controlled the finances, paying his wife an "allowance," each month, and dictated how and when she could make purchases for the family. (RP 106, CP 24) Aeran had access to the community accounts and could withdraw funds from those accounts, but she was required to ask Richard for permission. (RP

31, RP 39) Richard denied Aeran access to marital funds when she wanted to visit family in Korea when her mother died, attend beauty school, and retain counsel. (RP 21, 31, CP 24) Richard made all financial decisions for the family and his decision was the final one. (RP 31, CP 24)

B. Procedural history—Legal Separation

On July 13, 2011, Aeran was served with the Summons, Petition for Legal Separation, and the following unsigned *proposed* final orders in this case: Decree of Legal Separation, Findings of Fact and Conclusions of Law, Parenting Plan, and Order of Child Support. (RP 71, CP 4) It is not known whether the documents that were served had case numbers on the pleadings.

The final orders were entered with the court on August 12, 2011. (CP 6) Aeran then asked Richard if she could have access to funds to retain counsel; Richard denied her access. (RP 31) Nothing had changed for the next two years, and Aeran believed that the case was not concluded. (RP 34, 35) Aeran continued have medical coverage for herself, continued to receive her monthly allowance, and Richard paid on the family mortgage each month as he did during the marriage. (RP 36)

Copies of the court-signed orders entered on that date were not sent to Aeran nor did she have any notice that an order of default was entered in the case. (RP 37) Aeran learned that the

case had been finalized on or about May 20, 2013 when she was served with a motion to convert the legal separation to a decree of dissolution. (RP 34) After retaining counsel, her attorney, Ms. Jimin Kim explained to Aeran that a decree of legal separation was entered on August 12, 2011 through an order of default. (RP 33)

C. Forgery of court documents: August 12, 2011

From August 12, 2011 to June 1, 2013, Richard maintained the status quo and controlled all of Aeran's support include court-ordered child support and spousal maintenance. (RP 39, CP 23) Richard was ordered to pay Aeran \$1800 in child support and \$700 in spousal maintenance (\$2500). (RP 97 CP 8, 10) He also had control over the only asset awarded to her in the decree: the family home. (RP 20)

Richard forged Aeran's name on the child support order to request DCS enforcement. (CP 26) As a result, Aeran did not know that she was awarded child support nor was she aware that she could seek enforcement through the Division of Child Support. (RP 29) Richard also forged Aeran's name on a bank direct deposit authorization form to ensure that all child support and spousal maintenance would be deposited into a separate bank account controlled solely by him. (RP 39, 40)

Aeran received an allowance of \$1100 directly from Richard, through an "allowance" for the past 8 years during the marriage.

(RP 31) Instead of paying Aeran spousal support, and the remaining amount in child support, he chose to use the child support and spousal maintenance to pay \$1400 toward the mortgage on the family residence. (RP 31, 32) Richard also received the tax exemption for both children every year even though he exercised minimal visitation. (CP 8)

Richard maintained this identical pattern of payment during the marriage to conceal from Aeran that she had an enforceable right to support and that the case had been concluded. (RP 31, CP 10) He also had free access to the family residence, an asset awarded to Aeran in the Decree, as he did during the parties' marriage. (RP 20, 93) Richard did not enforce his rights under the parenting plan because Aeran would have been alerted that final orders were entered in the case. (RP 94) When asked for the reason that he failed to enforce his rights under the parenting plan, Richard provided no response to the court. (RP 93, 94)

D. Motion to convert decree to a dissolution: June 11, 2013

At the hearing on June 11, 2013, Aeran's attorney, Jimin Kim, filed an objection to the entry of the Decree of Dissolution and raised the issue about the support payments being directly deposited into Richard's separate account. (CP 12, 22, 18) The court was dismissive toward Ms. Kim and suggested that she file motion for contempt. (CP 18) At the hearing, the court believed it

was suspect that all support payments were being depositing into an obligor's separate bank account. (CP 18) However, the court turned a blind eye to Richard's highly unusual conduct, and entered the decree of dissolution. (CP 18)

Prior to the hearing on June 11, 2013, Aeran contacted Richard, through attorneys, about the deposit of spousal maintenance and child support into Richard's separate account. (CP 22, Letter dated June 13) Richard indicated that Aeran was a joint owner to that particular account, until March of 2012. (CP 22) After obtaining bank records, it was evident that after the order of default, support funds were actually being deposited into a separate account on September 26, 2011. (RP 39, CP 22) Aeran was never an accountholder for that account. (RP 39) He forged her name on a direct deposit form with DCS so that all support payments would go directly into that separate account. (RP 100, 96, CP 23)

E. Oral testimony of parties: October 2, 2014

When asked about the forgery on October 2, 2014, Richard provided a different explanation, and testified that the parties had agreed to this arrangement. (RP 96) Richard provided no explanation as to the reason that his ex-wife would sign a form that would deny her access and ownership of child support and spousal maintenance to which she was entitled to under a court order. (RP

101) Aeran retained her current attorney and filed a motion to vacate Decree on February 27, 2014. (CP 15)

The court scheduled a trial to take oral testimony of the parties on October 2, 2014. (CP 25) Richard's attorney, Robert Helland, admitted to forging Aeran's name on the child support order, and Mr. Helland was removed from the case. (CP 26) The court denied Aeran's motion to vacate, and found that it was plausible and not unusual for Richard to control the assets awarded to her in the Decree as well as the child support and spousal maintenance for two years. (CP 29,30) It also found that even though Aeran was not awarded any retirement assets or savings acquired during marriage, the award of the marital residence to her offset this omission of retirement benefits set forth in the Decree. (CP 29, 30) Aeran appealed the court's ruling.

III. ARGUMENT

A. Richard maintained the "marriage status quo" and continued to control Aeran's access to child support, spousal maintenance, and marital residence awarded to her in the decree so the he could conceal the finality of the case and prevent her from vacating the default judgment under CR 60b(1).

1. Standard of Review

The decision whether to vacate a final judgment is reviewed for abuse of discretion. Marin v. Pickering, 85 Wn.2d 241 (1975). A reviewing court must find that the trial court's decision was manifestly unreasonable or was based on untenable grounds or

untenable reasons. Marriage of Thompson, 32 Wn.App.179 (1982). Discretion is abused if the trial court makes its decision based on a misunderstanding of the law applied to default judgments. Little v. King, 160 Wn.2d 696, 702, 161 P.3d 345 (2007). "An abuse of discretion exists only when no reasonable person would take the position adopted by the trial court." Griggs v. Averbek, Inc., 92 Wn.2d 576 584, 599 P.2d 1289. "[A]n abuse of discretion is more readily found in those instances where the default judgment is set aside and a trial on the merits ensues." White v. Holm, 73 Wn.2d 348, 351-52, 438 P.2d 581 (1968).

2. A trial court has great discretion to reopen default decrees upon a showing that an injustice has been perpetrated.

Before a court will vacate a default order, a moving party must meet the requirements in CR 60(b) and show four factors: two primary and two secondary factors, set forth in White v. Holm, 73 Wn.2d 348, 352, 438 P.2d 581 (1968). The two primary factors are (1) that there is substantial evidence supporting a prima facie defense and (2) that the failure to timely appear and answer were occasioned by mistake, in advertence, surprise, or excusable neglect. Little v. King, 160 Wn.2d 696, 703-04, 161 P.3d 345 (2007) (citing White, 73 Wn.2d at 352).

The two secondary factors are (1) that the defendant acted with due diligence after receiving notice of the default order and (2)

that the petitioner will not suffer a substantial hardship if the order is vacated. Id. at 704 (citing White, 73 Wn.2d at 352).

The two secondary factors are met. Aeran acted diligently upon notice of the default order. She retained counsel with the limited funds that she was receiving from Richard (her allowance of \$1100), and presented an objection to the motion on conversion of the legal separation to a decree immediately upon notice. (CP 12) Aeran's attorney also raised the issue regarding the payment of child support and spousal maintenance to Richard with the court. (CP 12).

A motion to vacate was filed on February 27, 2014. Aeran sought out other counsel because her former attorney chose not to proceed as her attorney. Aeran went to various attorneys but could not pay the retainer, nor could she find counsel that could overcome the language barrier. (RP 51) Even though Aeran can write English with the assistance of a dictionary or Richard, Aeran struggled to comprehend English. (RP 24)

The record reflects that during direct and cross examination, Aeran's ability to comprehend simple questions was evident. Even having the assistance of an interpreter, Aeran asked the attorneys and the judge for clarification of simple questions. When asked about her ability to take a written exam to obtain her driver's license, she testified that she was able to pass it when the test was

in Korean. (RP 57) Due to this barrier, Aeran's ability to change counsel immediately was hampered by her inability to communicate with English speaking attorneys and her inability to access community funds.

Second, vacating the default orders inequitably obtained by Richard will not substantially prejudice him. Richard obtained default orders precisely 30 days after service of the petition. Richard controlled all assets awarded to Aeran to include child support and spousal maintenance subsequent to the default order. In fact, Richard received a windfall from the entry of the default order. This factor should not be an issue in this appeal.

There is substantial evidence to establish a strong and conclusive defense on all issues related to the default order, to include the parenting plan. Courts have recognized the difficulty in requiring a defaulting party to develop a meritorious defense without the opportunity to conduct discovery. Calhoun v. Merritt, 46 Wn.App. 616, 620-21, 731 P.2d 1094 (Div. 3 1986). This requirement is not intended to be burdensome. Farmers v. Waxman Indus., 132 Wn.App. 142, 148, 130 P.3d 874 (Div. 1 2006).

When a party can show a meritorious defense, the court's scrutiny on the reasons that a party failed to timely appear or defend the action is not as great. White v. Holm, 73 Wn.2d at 352-

53. Even when the other White factors are not as strong, showing a prima facie defense justifies the vacation of the default orders because it is equitable. TMT Bear Creek Shopping Center v. Petco Animal Supplies, Inc., 140 Wn.App. 191, 204-05, 165 P.3d 1271 (2007).

Aeran testified and set out in a declaration that she was married to Richard for 20 years and that she was entitled to at least one-half of all marital assets to include all retirement accounts (Boeing pension and VIP account), and all funds in bank accounts. (CP 15, 23, 24) Richard earned over \$100,000, excluding bonuses, for several years during the marriage and the parties' only community debt was the family mortgage. (CP 8, 10) Aeran received and "allowance" of \$1100 from the community funds, per month to pay the utilities, pay for groceries, and expenses related to the two children. It is unknown where Richard deposited or spent the remaining income.

Regarding spousal maintenance, Richards earns ten (10) times the income of Aeran; yet she was awarded a meager \$700 per month of support for four years after 18 years of marriage. She had no idea that her support was being paid to Richard and that after four years she would have no ability to maintain the mortgage. She has minimal work history, no education beyond a high school diploma earned in Korea, and spent the last 20 years working as a

homemaker. Then Richard "arranges" for the court to award Aeran the family home and ordered her to pay a mortgage that she could not afford.

The child support worksheet fails to include the annual bonuses received by Richard. Richard received the financial benefits of claiming the children for the tax exemption every year. Richard exercised minimal visitation with the children requiring Aeran to pay for all of the children's expenses with her "allowance." There is no question that Aeran has a meritorious defense as to the petition asserted by Richard.

Because the motion to vacate was brought over a year after the entry of the judgment, the trial court is without authority to vacate the order under CR 60(b)1. Aeran concedes that the test in White is not available to a party that waits more than one year after the default order is entered. The court should have noted that because of Richard's wrongful conduct under CR 60(b)4, she was deprived of this remedy.

Aeran presents an analysis under White to show that, had she been aware of the existence of final orders, she could have sought relief under CR60(b)1. In furtherance of the fraud, Richard forged the child support order and the form supplied by the Division of Child Support to authorize it to deposit all funds into Richard's separate bank account. Richard continued to give Aeran an

"allowance," paid on the family mortgage (with her maintenance), continued maintain her on the health insurance through Boeing, and purposely failed to enforce his visitation rights under the parenting plan. Aeran never could have known that the parties were legally separated and that final orders were entered.

His behavior for two years was identical to the time when the parties were married for the specific purpose of defrauding his wife. Richard sought to maintain the marriage status quo so that he could mislead his wife and prevent her from taking action with the court. If Aeran had received the final orders, she would have acted immediately as she would have had a remedy under White and CR 60(b)(1). More important, she would have notified DCS of Richard's fraudulent activity and collected the support awarded to her in those orders.

B. Whether Richard's deliberate and calculated attempt to procure a default judgment through the concealment of the finality of the case and coupled with the illegal act of forgery of court documents requires a court to vacate final orders pursuant to CR 60(b)4 and CR 60(b)11.

Richard's wrongful conduct justifies it in vacating the default orders under CR 60(b)4 and/or CR 60(b)11.

CR 60(b)11 provides that under extraordinary circumstances a court will grant a motion to vacate an order. In re Marriage of Tang, 57 Wn.App. 648, 789 P.2d 118 (1990). Default judgments fall under CR 60(b)11. It is described as "one of the most drastic

actions a court may take to punish disobedience to its commands.”
Widcus v. Southwestern Elec. Corp., Inc., Ill.App.2d 102, 109, 167
N.E.2d 799 (1960). It is the policy of the law that controversies be
determined on the merits rather than by default.” Dlouhy v. Dlouhy,
55 Wn.2d 718, 721, 349 P.2d 1073 (1960).

CR 60(b)(4) provides:

“On motion and upon such terms as are just, the court may relieve
a party or his legal representative from a final judgment, order or
proceeding for the following reasons: ... (4) Fraud (whether
heretofore denominated intrinsic or extrinsic), misrepresentation,
or other misconduct of an adverse party.”

When a motion is filed to vacate a default order under CR
60(b)(4) , the fraudulent conduct must cause the entry of the
judgment such that the losing party was prevented from fully and
fairly presenting its case or defense.” Lindgren v. Lindgren, 58
Wn.App. 588, 596 (1990); Momah v. Bharti, 182 P.3d 455 (2008).
The claim of fraud must be conduct by a prevailing party that
prevented the losing party an opportunity to present its case to the
court. Tonga v. Fowler, 118 Wn.2d 718, 729, 826 P.2d 204 (1992).
The losing party must show that the fraud or other misconduct by
clear and convincing evidence. Lindgren, at 596. Concealment of
a suit is grounds under CR(b)4 to vacate a default order. Morin v.
Burris, 160 Wn.2d 745, 161 P.3d 956 (2007).

Aeran seeks relief under subsection CR 60(b)4 and CR
60(b)11; thus her motion is subject to the “within a reasonable time”
standard, as opposed to the one year standard applied to relief

sought under CR 60(b)1. The court must look at the interval of time between when the party became aware of the judgment and when she filed the motion to vacate. Luckett v. Boeing Co., 98 Wn.App. 307, 312, 989 P.2d 1144 (1999).

The record reflects that Aeran first learned about the final orders on or about May 10, 2013. (CP 11, 12) After filing an objection to the motion to convert the legal separation to a dissolution, Aeran saved funds to retain counsel 8 months later. Aeran had minimal financial resources as her funds were limited to the "allowance" she received from Richard to retain new counsel. Eight months is a reasonable amount of time to file the motion.

After Aeran was served with the petition and proposed final orders, Aeran and Richard communicated about the contents of the petition. The parties' testimony about the content of those discussions differed greatly at trial. Because there was no signature, she did not believe that the proposed orders sent to her were valid. Richard was aware of Aeran's ignorance of the law and that she actually believed that if she did not received court-signed order, no orders were entered. He also knew that Aeran believed that no order was "final" if a judge's signature was missing; for this reason, he concealed the signed orders from her. He also cut her off from the finances when she asked if she could retain counsel.

Richard reassured his wife that it was just a legal separation and not a dissolution, implicitly conveying to her that nothing was final. He played on her cultural ignorance so that she would not contest the action, explaining to her that the American legal system differed from the Korean one.

Even if Richard told his wife that the case was "finished" the concealment of final orders and his conduct following the default order show that he intended to deprive Aeran of notice. It is undisputed that he went to great lengths to make it appear as if the case had not been concluded and that no enforceable orders were in place.

When asked about the reason for the support payments being paid back to him, Richard misrepresented to the court that Aeran had full access to the accounts during the two year time period and that she agreed maintain a joint account.

After documentation was presented at trial on October 2, 2014 to demonstrate that Aeran had no access to the accounts, Richard testified that Aeran willfully agreed to remove her name from the account. Then, Aeran allegedly signed an authorization form so that all support payments would go directly to an account to which she had no access to. It is simply ludicrous for a reasonable person going through a contentious dissolution or legal separation to agree to continue to be controlled by an ex-spouse. It is

unthinkable that a reasonable person would relinquish all retirement assets, accept less than the court ordered amount in child support each month, and give 100% of one's maintenance to an ex-spouse to pay on a mortgage for a house one could not afford.

The trial court's finding that this "financial arrangement" between the parties to be a plausible one, is just mind-boggling. It found that Aeran was also sufficiently independent to open up her own bank account, access marital funds to retain counsel and defend the action with or without counsel.

The court failed to note Richard's misrepresentation to the court and counsel about the existence of the "financial arrangement." When asked by counsel about Aeran's consent to the "financial arrangement" Richard changed his explanation after documentation was produced to show otherwise. Aeran did not have access to the account; Richard set up a different account on September 22, 2011. If Richard was being truthful and that an arrangement was agreed to, he would not provide varying accounts to the court. Clearly, the parties were not in agreement and Richard concealed the existence of the enforceable decree and child support order so that he could deprive Aeran from contesting this action timely.

Richard also misrepresented to the court that the order of support was entered through an "agreement." Richard's attorney,

then forged Aeran's name on the support order request enforcement through the Division of Child Support. Signing an opposing party's name is not an inadvertent mistake by an attorney. It was a willful act intended to deprive Aeran from having any communication or relationship with DCS. Because Richard controlled DCS's relationship with Aeran he had complete control over whether DCS contacted Aeran for two years subsequent to the entry of the default orders.

Admittedly, either party is permitted to sign the order to request enforcement, but because Aeran had no knowledge that an order was entered and that DCS services were requested, she had no ability to receive mail, obtain a case worker, or request that all support is paid to her directly. Again, forging of Aeran's name on the support order, by an attorney, was the willful intent by Richard to maintain control of the support and any and all potential communication between DCS and Aeran.

Aeran was awarded the family home, yet Richard failed to execute a quit-claim deed to the home. He refused to give Aeran the keys to the home and accessed it freely during the two year time period. Finally, Richard did not enforce his visitation rights with the children because he did not want to alert Aeran that final orders were entered. When asked for the reason that he failed to

enforce his rights to refer to the parenting plan with Aeran, Richard offered no response.

Where a wife has no idea that final orders have been entered, and the husband takes proactive steps to manipulate his wife for two years about those orders, all the while, misrepresenting to the court about the existence of a "financial agreement" where husband could continue to control all assets and support ordered to wife, the court should find that there is clear and convincing evidence to vacate the default orders under CR60(b)4 and/or CR60(b)11.

C. Richard's misrepresentation of Aeran's income, nature and extent of the parties' assets and debts, and the disparity of earning power, placing Aeran in an unjust circumstance, requires the court to vacate the property division and spousal maintenance sections of the default order under CR 60(b)11.

Under 26.09.170, the division of property must be vacated under CR60(b):

"[t]he provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state."

In making a "just and equitable" distribution of property and liabilities, the court must consider all relevant factors, which shall at least include the following:

1. The nature and extent of community property
2. The nature and extent of the separate property
3. The duration of the marriage, and
4. The economic circumstances of each spouse or ... at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a

spouse . . . with whom the children reside the majority of the time. RCW 26.09.170

Here, Richard prevented the court from complying with RCW 26.09.080 when he failed to disclose the nature and extent of the community assets and liabilities. He earned over \$100,000 annually, excluding company bonuses, and provided his wife a monthly allowance of \$1100 per month. The parties held savings accounts and he failed to disclose the amounts in the specific bank accounts held jointly and separately during the marriage.

Because not all of the assets were disclosed, the court could not consider subsection (4) of RCW 26.09.080. The court would not have approved a very minimal spousal maintenance award after 18 years of marriage for a spouse that was unemployed throughout the marriage (and at the time the default order was entered) and Richard's disproportionate award of community assets. It would not have omitted Richard's bonus income, overstate Aeran's income, nor would it arrange for Aeran to be awarded a home that she could not afford.

Under RCW 26.09.080 and CR 60(b)4, it is *not necessary* to prove actual fraud; a party's misrepresentation or misconduct is sufficient for a trial court to vacate a default order. In re Marriage of Maddix, 41 Wn.App. 248, 252, 703 P.2d 1062 (1985). Richard's actions leading up to the entry of the default order awarding him an unjust and disparate property division, and his willful conduct to

conceal its finality to facilitate the fraud, clearly rise to the level of misconduct required under CR 60(b)4.

D. Whether the court violated Aeran's due process rights when it failed to vacate the order of default.

"Constitutional issues may be raised for the first time on appeal though, as a preliminary matter, they will be closely scrutinized for errors that are manifest and truly of constitutional magnitude."

Norton v. Brown, 99 Wn.App. 118, 122, 992 P.2d 1019 (Div. 3 1999) (citing State v. WWJ Corp., 138 Wn.2d 595, 602, 980 P.2d 1257 (1999)). Due process requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Olympic Forest Prods., Inc. v. Chaussee Corp., 82 Wn.2d 418, 422, 511 P.2d 1002 (1973).

Richard's pattern of conduct in this case, from the entry of default order after 30 days, the concealment of the final orders to the forgery of bank documents, show a deliberate effort to deny Aeran her constitutional rights to due process. Not only did he deprive her the right to vacate the default order under CR 60(b)1, a very useful mechanism for parties to vacate default orders, he acted with premeditation and purpose to deny her the ability to defend this action.

Having been married for 18 years, Richard knew that he could manipulate his wife, her cultural vulnerability and dependency

on him. He knew that through the control of the marital funds coupled with her limited ability to communicate in English, and ignorance of the law, his plan to deprive her of the marital assets would succeed. Aeran is not without blame, and she should have filed a response in this case or made contact with the court in some manner. However, she failed to respond because Richard set up meticulous plan to ensure that Aeran would not believe that a court-ordered separation had been entered. Had he allowed the case to take its general course, and require Richard to pay all support to Aeran, execute the quit claim deed, and require her to pay on the mortgage, she would have taken action in the case immediately.

The primary purpose of a default order is to address a party's refusal to participate or comply with orders. Aeran had no opportunity to participate in the legal process because Richard entered default orders 30 days after service and concealed them for two years. He controlled every aspect Aeran's life from the payment of the mortgage, use of support to pay for the household, and her access to marital funds for counsel.

Aeran should have had access to community funds to retain counsel while the parties were married. Aeran should have received the final orders in this case so that she could go to the courthouse to alert a clerk or judge and she needed assistance. Aeran should have had the ability to know that she was entitled to

child support and maintenance through an enforceable court order and that Richard had no legal right to control support awarded to her. Through his actions, Richard deprived his wife of a fundamental due process right placing her in an extraordinarily unjust financial circumstance for the rest of her life. The court should vacate the default orders and give Aeran the opportunity to defend this action.

E. Whether Aeran is entitled to an award for costs and attorney fees on appeal, and for the fees incurred to file the motion to vacate with the trial court.

Aeran requests that the Court of Appeal order Richard to pay her attorney fees and statutory costs, and that Richard is ordered to pay the attorney's fees directly to her attorney. RCW 26.09.140 provides:

The court . . . may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorneys' fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs.

Aeran's motion to vacate the default order is well-grounded in law and principles of equity. This case involves a husband that manipulated his wife of 18 years that was emotionally and financially dependent on him. He not only controlled his wife

through every means possible but he manipulated her cultural vulnerabilities to enter orders that allowed him to continue to control her. Richard went to extreme lengths such as violating the law to deprive her of her due process rights so that she would not enforce the order.

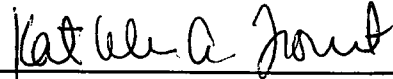
From the service of the petition to the entry of the default, his willful failure to send her court-signed documents, forgery of documents, and Richard's continued control over all assets, Richard ensured that she would have no opportunity to defend her position in this case.

Aeran was deprived of her property, support, maintenance, and more important, her right to present her position in this case because of Richard's misconduct. Aeran should have prevailed in her motion to vacate and she should prevail in this appeal. Aeran should be awarded costs and statutory attorney fees under RAP 14.2 and RAP 14.3.

IV. CONCLUSION

In conclusion, Aeran requests the Court of Appeal to find that the trial court abused its discretion in vacating the decree of legal separation, to adjust the disparate property division, spousal maintenance, and attorney fee provisions. Aeran also requests an award of attorney fees in an amount to be determined.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Kathleen A. Forrest".

Kathleen A. Forrest #37607

Attorney for Aeran Mursch/Appellant

No. 46794-1-II

Court Of Appeals, Division II
For The State Of Washington

In re Marriage of
Aeran H. Mursch, Appellant
And
Richard L. Mursch, Respondent.

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Kathleen A. Forrest, being first duly sworn oath, deposes and
says: that on the date given below, I served a copy of Appellant Brief and
this is Proof of Service on the following persons:

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STATE OF WASHINGTON
BY DEPUTY

I certify under penalty of perjury under the laws of the State of
Washington that the foregoing is true and correct.

Dated this 21 day of May 2015, Steilacoom, Washington.

Kathleen A. Forrest
Kathleen A. Forrest
Attorney for Appellant